

Case No. 11,943.

IN RE ROBINSON ET AL.

{3 N. B. R. 70 (Quarto, 17).}¹

District Court, S. D. New York. July 14, 1869.

BANKRUPTCY—OPPOSITION TO
DISCHARGE—COSTS.

Where one Coit, a creditor, opposed the discharge of bankrupts in a specification of twenty subdivisions, charging false swearing by the bankrupts on material matters before the register, and concealment of assets, none of which allegations were sustained, held, that the discharge be granted, and a decree entered that bankrupts recover from the creditor the costs, to be taxed, of resisting the opposition of their discharge.

[In the matter of Edward Robinson and Enoch Chamberlain, bankrupts. For prior proceedings in this litigation, see Case No. 11,942.]

G. A. Seixas, for the bankrupt.

J. S. L. Cummins, for the creditor.

BLATCHFORD, District Judge. The first specification in this case is to the effect that both of the bankrupts, on their examinations before the register, in this case, willfully swore falsely in regard to material facts concerning their estate and debts. Under this specification there are twenty subdivisions, fourteen of which specify instances of alleged false swearing by the bankrupt Robinson, and six of which specify instances of alleged false swearing by the bankrupt Chamberlain. There is nothing material in any of these matters. They relate to transactions between the bankrupts and William A. Coit, the opposing creditor, in 1865, and principally to the manner in which certain indebtedness, then created on the part of the bankrupts to Coit, arose. That indebtedness was paid, and is no longer in existence.

On the facts, if they were material, I am satisfied, on the evidence, that the version given by the bankrupts

is the true one. The examination of the bankrupts and other witnesses, was pursued by the creditor with an evident malice towards the bankrupts, and in a spirit of recklessness little befitting a judicial investigation, but quite consistent with the character of a money-lender who exacted from the bankrupts the sum of three hundred and fifty dollars for the loan of twenty-eight thousand dollars for four days, being at the rate of over one hundred and thirteen percent 983 per annum. The manner, too, in which the creditor manipulated and procured some of the testimony put in on his part, savors very much of a criminal offense. The principal witness on whom the creditor relies to sustain his account of the transactions covered by the first specification, does not present himself in a favorable light, inasmuch as it appears that he received compensation as an individual, for lending the money of the bank of which he was president—as grave an offense as can be committed by any one in a position of trust. As to Coit his entire testimony shows him to be wholly unworthy of credit. As to the second specification—that the bankrupts have concealed and refused to account for thirty-four thousand dollars of quartermaster's certificates or government vouchers, there is no testimony to sustain it, and the allegation is wholly disproved. The third specification—that the bankrupts have willfully sworn falsely in the affidavit to the schedule of assets attached to their petition, by not including therein the said thirty-four thousand dollars of quartermaster's certificates, or the proceeds thereof, is not sustained, inasmuch as it is shown that they had no such property at the time. The fourth specification—that the bankrupts have concealed their books and writings relating to their estate and effects, is unsupported. The fifth specification—that the bankrupt Chamberlain has concealed an interest in a house and lot in Twenty-Third street in New York, is not sustained. The sixth specification alleges

that the bankrupt, Chamberlain willfully swore falsely in his affidavit to the schedule of assets attached to his petition, in not including therein the said house and lot in Twenty-Third street The conclusion as to the fifth specification disposes of this branch of the sixth. The sixth specification also avers that the bankrupt Chamberlain willfully swore falsely in said affidavit, in not setting forth therein a claim against one Morris. The evidence is that no such claim existed. The seventh specification, in relation to the concealment by the bankrupt Chamberlain of books and writings, is not sustained.

Discharges will be granted to both of the bankrupts when the register shall have certified conformity, and a decree will be entered that the bankrupts recover from the opposing creditor the cost of resisting the opposition to their discharge, to be taxed.

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